

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Appeal (C) No.657 of 2010**

- The Oriental Insurance Co Ltd, Through Divisional Manager
Rajiv Plaza, Bus Stand, Bilaspur Tahsil and Zilla Bilaspur (CG)

---- Appellant**Versus**

1. Akhilesh Sharma, S/o. Narendra Sharma, Aged about 24 years,
R/o. Yadunandan Nagar, Thana Civil Lines, Tahasil and Zilla
Bilaspur (CG)
2. Santosh Kumar S/o Jagdish Kerketta R/o Village Thalee, Thana
Rola, Tahsil & Zilla Jashpur, C.G. Through Sun Body Ring Road
No. 2, Tatibandh Raipur Zilla Raipur, C.G. (Present Driver Of
The Vehicle Truck No. C.G.-04/J 5098)
3. Anand Kumar Chowkes S/o C.L.Chowkse R/o Through: Sun
Body Ring Road No. 2, Tati-Bandh Raipur, Zilla Raipur, C.G.

---- Respondents

For appellants	: Smt. Chitra Shrivastava, Advocate
For respondent No.1	: Shri Keshav Dewangan, Advocate

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****28.02.2017**

Learned counsel for the appellant submits that as per Order dated 27.10.2016 they have submitted a covering memo and IA No.7/16 showing service to respondent No.2 through substituted service i.e. by paper publication published in the news paper Dainik Bhaskar. Thereby they have complied with order dated 27.10.2016 and also as submitted during hearing of the MCC No.151/17 dated 20.02.2017.

2. Perused the record.

3. As per Office note dated 24.10.2016 as the earlier notice was unserved on respondents 2 & 3, notice through paper publication had been issued to respondents 2 & 3 vide order dated 10.02.2016. The notice had been issued on 08.3.2016 but the service of notice has not been filed by the counsel for the appellant and as per the order of this court dated 27.10.16, at the request of learned counsel for the appellant a week's time was granted to remove the default and the order was peremptory order that if the default is not removed within a week the appeal shall dismissed automatically without reference to the Court.

4. Thereafter on non compliance of the order dated 27.10.16 and as the default has not been removed within the stipulated time, the appeal was dismissed automatically and after the said dismissal the appellant has preferred MCC 151/2017. In the said MCC in para No.4 counsel for the appellant made statement that default has been removed though after limitation given in the order dated 27.10.16 and as the default has been removed the MCC may be allowed and the matter may be restored for hearing. After recording the statement of the learned counsel for the appellant, this court passed a precondition order as mentioned in para 6 of the order dated 20.02.2017 wherein it is directed that if the default has been removed in the said MAC, then only the appeal be restored to it original number and if the statement is not as required, the order passed in the MCC shall lose its efficacy. With this now this court has to examine whether the default has

been removed or not. For this IA No.07.17 is filed on 02.11.2016 well within a week as directed. But the covering memo along with the photo copy of the paper has been filed on 04.11.2016 i.e. 2 days after the time granted and that too was for respondent No.2 whereby notice were published in the news paper for respondent No.2 only. On 27.02.2017, IA No.08/17 for publication for notice to respondent No.3 was filed. In the said interim application it is prayed that due to bonafide mistake publication of notice on respondent No.3, was left. With this the Court may permit issuance of notice through paper publication for respondent No.3. With this, undisputedly order dated 10.02.16 has not been complied in *toto* and also Order dated 27.10.2016 has not been complied in *toto* as the compliance was only for respondent No.2 and not for respondent No.3.

5. With the above factual position, statement of learned counsel for the appellant submitted during hearing of MCC No.151/17 was not correct and till date no default has been removed for respondent No.3 as per the above orders and as mentioned in the para 6 of the order passed in MCC 151/2017. If the statement is not as required the order passed in instant MCC shall lose its efficacy.

6. On due consideration, as default for respondent No.3 is not at all removed as submitted by learned counsel for the appellant as in para 4 & 5 of the order dated 20.2.17, the said order loses its

efficacy. Consequently, instant MAC is dismissed as there is a pre-condition order in MCC No.151/17 as aforementioned.

Sd/-

(Chandra Bhushan Bajpai)

JUDGE

Bini